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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 23rd March 1954

S.R.O. 1118.—Whereas the election of Shri Raj Narayan, as a member of the Legislative Assembly of the State of Uttar Pradesh from the Banaras South constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Thakur Prasad son of Shri Vasishtha Narayan, Village and P.O. Jakhini of Pargana Kaswar Sarkari, Tehsil and District Banaras;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT ALLAHABAD

ELECTION PETITION No. 244 OF 1952

PRESENT:

Sri V. G. Oak, I.C.S., *Chairman.*

Sri N. N. Mukerji, *Member.*

Sri Babu Ram Avasthi, *Member.*

Sri Thakur Prasad—*Petitioner.*

Versus

Sri Raj Narain & others—*Respondents.*

JUDGMENT

This is an election petition by Sri Thakur Prasad challenging the election of Sri Raj Narain to the U.P. Legislative Assembly in 1952 from Banaras (South) Constituency. The petitioner is an elector in the said constituency. The ten respondents were nominated as candidates for election from this constituency. Respondents No. 7 to 10 withdrew their nominations within the prescribed time. Respondents No. 1 to 6 remained in the field. A poll was taken on 25th January 1952. Result of the election was announced on 18th February 1952. Sri Raj Narain, respondent No. 1, was declared to have been elected. It is alleged in the petition that, there was no free election on account of corrupt practices of bribery and undue influence committed by respondent No. 1. Respondent No. 1 submitted a false return of election expenses. Many illegalities were committed in conducting the election. For these reasons the election of respondent No. 1 is void.

According to the petitioner, respondent No. 1 paid Rs. 1,200 to Sri Shiva Ram Singh, respondent No. 6 in order to induce him to withdraw from the contest. Secondly, there was a criminal case against Purshottam and others. In order to secure the votes of those accused, respondent No. 1 promised that he would give evidence for them and get all of them acquitted. Thirdly, there was a case under Sec. 107, Cr. P. C. against Jamuna and others. Their votes were captured by respondent No. 1 by promising them that, he would write to the District Magistrate of Banaras to save them from the criminal proceedings. In pursuance of that promise Sri Raj Narain wrote letters to the District Magistrate. Fourthly, the principal of Jagatpur Higher Secondary School influenced the staff of the school and guardians and parents of students to vote for respondent No. 1 with the inducement that the students would be given freships.

Again, respondent No. 1 submitted a false return of election expenses in as much as he did not show in his return the sum of Rs. 1,200 paid by him to respondent No. 6. Ballot boxes used in the election were defective. The procedure laid down in different rules framed under R.P. Act, 1951 was not followed. The petitioner, therefore, prayed for declaration that, the election of respondent No. 1 is void.

The petition was contested by Sri Raj Narain, respondent No. 1. He denied all the charges of bribery and undue influence made against him in the petition. He denied having paid Rs. 1,200 to Sri Shiva Ram Singh, respondent No. 6. It was denied that respondent No. 1 held out hopes to Purshottam and other accused that he would get them acquitted. It was denied that respondent No. 1 induced Jamuna and others to vote for him with the promise that, Sri Raj Narain would write to the District Magistrate to save them from criminal proceedings. It was denied that the principal of Jagatpur Higher Secondary School influenced members of the staff or guardians and parents to vote for respondent No. 1. It was pleaded that respondent No. 1 is not aware whether ballot boxes were defective as alleged. Even if that allegation is correct, the defect did not affect the result of the election. It was denied that any irregularities were committed by the election staff in conducting the election. In the alternative, it was pleaded that such irregularities did not materially affect the result of the election. According to respondent No. 1, 471 votes polled for him on ballot papers meant for election to the House of the People were improperly rejected by the Returning Officer. Finally, it was pleaded that respondent No. 1 took care to avoid the commission of corrupt practices, and had given instructions to his workers and agents to that effect.

Shri Ram Adhar, respondent No. 7, filed a separate written statement. He pointed out that respondent No. 7 was a dummy candidate on the socialist Party ticket. As Shri Raj Narain Singh's nomination paper was held valid, Shri Ram Adhar respondent No. 7 withdrew his candidature within the prescribed time. It was conceded that the allegations made in the election petition did not concern respondent No. 7. Various allegations were made against Shri Rishi Narain, respondent No. 2 in the written statement of Shri Ram Adhar, respondent No. 7. Lastly, it was pleaded that verification of the petition is not according to law, and certain schedules of the petition are not verified at all. So the petition is liable to be dismissed.

These pleadings gave rise to the following issues:—

ISSUES

1. Is respondent No. 1 guilty of bribery as detailed in Schedule I?
2. Is respondent No. 1 guilty of undue influence as detailed in Schedules I & II?
3. Whether respondent No. 1 submitted a false return of election expenses by omitting the item of Rs. 1200/- mentioned in paragraph (15) of the petition?
4. Did the election staff commit the irregularities and illegalities detailed in schedule V? Did these irregularities and illegalities materially affect the result of the election?
5. Is respondent No. 1 entitled to be condoned for reasons given in paragraph (17) of his written statement?
6. Is the verification of the petition not according to law? Is the petition liable to be dismissed for non-compliances of Section 83 R. P. Act, 1951, on account of defective verification of the petition and want of verification of the Schedules?
7. To what relief, if any, is the petitioner entitled?

It may be pointed out at the outset that, this is an election petition by an elector of the constituency. The petitioner was not a candidate for the election. Shri Rishi Narain was the candidate set up by the Congress Party. Shri Raj Narain, respondent No. 1, was a candidate on behalf of the Socialist Party. It has been alleged in the written statement of respondent No. 7 that, although the petition has been filed in the name of Shri Thakur Prasad, Shri Rishi Narain, respondent No. 2 is virtually the petitioner. The petition has been filed in accordance with a scheme evolved by Shri Thakur Prasad, Shri Rishi Narain, respondent No. 2, and Shri Shiva Ram Singh respondent No. 6. There is no prayer in the petition that, any particular candidate should be declared duly elected. Since Shri Raj Narain respondent No. 1 is the principal respondent, Shri Raj Narain will hereinafter be referred to as the respondent.

FINDINGS

Issue No. 1.—This issue deals with the charge of bribery as detailed in Schedule I. Three separate incidents have been alleged in Schedule I. The first incident relates to the payment of Rs. 1,200 to Sri Shiva Ram Singh respondent No. 6. The petitioner's case is that the backward community forms a majority of electors in this constituency. Kurmis form 40 per cent. of the population in the constituency. Sri Shiva Ram Singh is a Kurmi. He has done a good deal of social work for the backward community. He had great influence in the constituency. So, there was good chance of his success in the election. But pressure was brought upon him to make him withdraw from the election. Sri Raj Narain and Ram Adhar Singh approached one Bhaggal Ram of village Ghamhapur in the first week of December, 1951, and requested him to induce Sadho Chowdhary to use his influence to make Sri Shiva Ram Singh withdraw from the contest. So, a meeting was held at the door of Sadho Chowdhary at village Nagepur about the 8th of December, 1951. In this meeting Sri Shiva Ram Singh was advised to withdraw from the election. It was decided that Sri Shiva Ram Singh should accept from Sri Raj Narain all the expenses that had been incurred by Sri Shiva Ram Singh in connection with the election, and withdraw from the election. Sri Shiva Ram Singh's election expenses came to Rs. 1,200. On 12th December 1951 Sri Raj Narain paid Sri Shiva Ram Singh Rs. 1,200 at the latter's residence in village Chuppepur. Sri Vishwanath Sharma, who is a Socialist worker, wrote out a draft for publishing Sri Shiva Ram Singh's withdrawal from the election. Sri Shiva Ram Singh's withdrawal from the election was published in the daily newspaper "Aj" of Banaras dated 20th of December, 1951. On 13th December 1951 a meeting was held at village Bhairon-ka-Tal. In this meeting it was announced that, Sri Shiva Ram Singh had withdrawn from the contest after receiving election expenses from Sri Raj Narain. Another meeting for the same purpose was held at village Bahoranpur on 16th December 1951. In this meeting also Sri Raj Narain announced that he had obtained Sri Shiva Ram Singh's withdrawal.

The first witness on this point is Krishna Deo Upadhaya (P.W. 1). He is a resident of village Dih Ganjari. He is a B.A. LL.B. He is convener of the District Bhoodan Samiti, and gets a salary of Rs. 100 p.m. He stated that he was present at the meeting held at Bhairon-ka-Tal. It was gathered from Sri Raj Narain's Pattidar Shakal Narain that, Sri Shiva Ram Singh had been paid Rs. 1,200 and was withdrawing from the election. Although Shakal Narain is dead, his alleged statement in the meeting is not admissible in evidence. Formerly Krishna Deo Upadhaya was in the Congress. Then he joined K.M.P. Party. Later, he rejoined the Congress. Probably his sympathy is still with the Congress. The witness had no talk with Sri Shiva Ram Singh in connection with his withdrawal at any place. Krishna Deo Upadhaya did not hear any proceedings in the meeting itself. There were Kurmi candidates for other constituencies of Banaras district. Those Kurmi candidates also lost in the election.

The second witness on this point is Raghunandan Prasad (P.W. 2). He is a resident of village Bahoranpur. He is Sabhapati of the village. He has given evidence about the two meetings at Bhairon-ka-Tal and Bahoranpur. Ex. 91 is a leaflet distributed for announcing the meeting held at Bahoranpur on 16th December 1951. Ex. 91 purports to have been issued by eight persons. Raghunandan Prasad is one of the signatories of Ex. 91. The witness stated that Sri Raj Narain announced in these meetings that, people should vote for him, as he had obtained Sri Shiva Ram Singh's withdrawal. Raghunandan Prasad said that Sri Shiva Ram Singh did not attend the meeting on the 16th. According to the petitioner, the main object of the meeting at Bahoranpur was to announce Sri Shiva Ram Singh's withdrawal. If that were the case, Sri Raj Narain would have insisted on Sri Shiva Ram Singh's attending the meeting at Bahoranpur. In his examination-in-chief, Raghunandan Prasad referred to the meeting at

Bhairon-ka-Tal. But in cross-examination he admitted that, he did not attend the meeting at Bhairon-ka-tal.

Hridaya Narain Singh (P.W. 12) is another witness on this point. He described how Sri Raj Narain induced Sri Shiva Ram Singh to withdraw from the contest. This witness is a resident of Harduttpur. He said that Kurmis of his circle would have voted for Sri Shiva Ram Singh had he been in the field. The witness is a Bhoomidhar. He said that he did not work for any candidate in the election. It is not clear how he came to gather so much information about Sri Shiva Ram Singh's withdrawal.

The most important witness on this part of the petitioner's case is Sri Shiva Ram Singh (P.W. 5). He has described how pressure was brought upon him through Sadho Chowdhary. Sri Shiva Ram Singh stated that he received Rs. 1,200 from Sri Raj Narain on 12th December 1951. Ex. 7 is Sri Shiva Ram Singh's return of election expenses. In Ex. 7 it is noted that Rs. 1,200 were received on 12th December 1951 from Sri Raj Narain Singh as contribution. This return of election expenses was filed on 10th April 1952. It was suggested on behalf of the respondent that, Sri Shiva Ram Singh introduced this fictitious item in his return of election expenses in order to create a ground for the election petition. Sri Shiva Ram Singh said that Sri Vishwanath Sharma obtained from him his signature on a withdrawal form. The last date for withdrawal was 30th November 1951. There was, therefore, little point in preparing a withdrawal form on 12th December 1951. Sri Sahdeo Singh, appearing for the petitioner, argued that there was a rumour that, time for withdrawal might be extended. That is why a withdrawal form was prepared on 12th December 1951. Under Section 37, R.P. Act, 1951, a notice about withdrawal has to be delivered either by a candidate or his proposer, seconder or election agent. Sri Vishwanath Sharma does not appear to have been proposer, seconder or election agent of Sri Shiva Ram Singh. So Sri Vishwanath Sharma could not make much use of a withdrawal form signed by Sri Shiva Ram Singh. Admittedly Sri Shiva Ram Singh was in the Congress Party, when he filed his nomination. He stated that he stood as an independent candidate, when he noticed that the Congress Party had ignored the claim of the backward community. He further stated that on 28th March 1952 he received from the Congress office the postcard (Ex. 9) calling for his explanation for working against the Congress. So on 3rd April 1952 he went to explain his position. The fact that he went to give an explanation on 3rd April 1952 suggests that, Sri Shiva Ram Singh still considers himself to be a member of the Congress Party. He did not get any personal notice that, he had been expelled from the Congress. Some of the witnesses for the petitioner suggested, that, after his withdrawal Sri Shiva Ram Singh helped Sri Raj Narain in the election. But Sri Shiva Ram Singh admitted that he did not help Sri Raj Narain in the election. Although Sri Shiva Ram Singh claims to have withdrawn from the contest, he attended the counting of votes. He secured 548 votes. Sri Shiva Ram Singh stated that he made a note in his note book about the payment of Rs. 1,200. But that note book was not produced before the Tribunal to prove the payment. Sri Shiva Ram Singh says that he discharged all his servants, after 13th December 1951. He however, conceded that he paid his clerk up to 19th December 1951 and his driver up to 31st December 1951. Diet allowance was paid to the driver for the whole of December, 1951. Sri Shiva Ram Singh has passed the School Leaving Certificate Examination. He is not a resident of Banaras (south) constituency. He admitted that he canvassed on caste lines. This conduct amounted to a minor corrupt practice under section 124(5), R.P. Act, 1951. According to the petitioner, the respondent is guilty of bribery under section 123(1) of the Act. If the petitioner's case is to be accepted, Sri Shiva Ram Singh would be guilty of receiving such an illegal gratification. The act would amount to a minor corrupt practice under section 124(3) of the Act. Sri Shiva Ram Singh's position is like that of an accomplice.

The petitioner has filed a draft (Ex. 8) written by Sri Vishwanath Sharma. The petitioner's case is that this draft (Ex. 8) was given by Sri Vishwanath Sharma to Sri Shiva Ram Singh for publication in a newspaper. Sri Vishwanath Sharma, who appeared before the Tribunal as D.W. 11, admitted having written the draft (Ex. 8). But he does not admit that the draft was prepared in connection with the payment of Rs. 1,200 as alleged by the petitioner. In this draft (Ex. 8) it is written that the Congress was neglecting the backward community. On the other hand, the Socialist Party had been attending to this question. Candidates of the Socialist Party were likely to solve the problems of the backward community. So Sri Shiva Ram Singh, on the advice of his friends, was withdrawing from the contest. It is to be noted that in this draft (Ex. 8) the Congress was condemned, and the Socialist Party was praised. Sri Shiva Ram Singh stated that he prepared another draft and sent it for publication. The

announcement was published in the "Aaj" dated 20th December 1951. Ex. 11 is the issue of "Aaj" dated 20th December 1951. Ex. 11 contains a news item to the effect that, an independent candidate had announced that he would not contest election. It was mentioned in the news item that, Sri Shiva Ram Singh had issued a statement that he had withdrawn from the contest upon the Congress and Socialist candidates' giving an assurance that they would protect rights and interests of the backward community. Sri Shiva Ram Singh stated before the Tribunal that, "Aaj" appears to have printed the substance of his announcement. It means that he issued a statement in December, 1951 that he had withdrawn his candidature, because the Congress and Socialist candidates were prepared to protect the interests of the backward community. It will be noticed that the statement contained in Ex. 11 places the Congress and the Socialist candidates on an equal footing. On the other hand the draft (Ex. 8) was against the Congress, and in favour of the Socialists. Sri Shiva Ram Singh did not explain why the draft (Ex. 8) and the publication (Ex. 11) differ in this important respect. The petitioner attached much importance to the leaflet (Ex. 91). According to the petitioner, this leaflet was issued on 15th December 1951, that is, after the payment of Rs. 1,200 on 12th December 1951. According to the respondent, the leaflet (Ex. 91) was issued some time before 12th December 1951. It was conceded on behalf of the respondent that, these leaflets were issued for announcing the meeting to be held at village Bahoranpur on 16th December 1951. At the top of the leaflet it was mentioned that people should give their votes for the two Socialist candidates, Sri Raj Narain and Sri Vishwa Nath Sharma. There is nothing in Ex. 91 to indicate that the meeting at Bahoranpur was especially called for announcing Sri Shiva Ram Singh's withdrawal from the contest. Ex. 91 merely contains allegations about the failure of the Congress party and the good record of Socialist candidates. It is usual for party candidates to issue such leaflets during an election campaign.

The respondent produced a large number of witnesses to disprove the charge of payment of Rs. 1,200. According to the petitioner, pressure was brought upon Shri Shiva Ram Singh through Sadho Chowdhary. The respondent produced Sadho Chowdhary as D.W. 1. His house is close to village Nagepur. It is common ground that, this man has got much influence among Kurmis. He denied having brought pressure upon Shri Shiva Ram Singh to withdraw from the contest. Sadho admitted that an election meeting was held at his door. He said that caste people advised Shri Shiva Ram Singh to withdraw, as he was not likely to get votes. Sadho admitted having canvassed for Shri Raj Narain. Sadho is an interested witness. He said that there was no election meeting for Sri Raj Narain at Bhairon-ka-tal. During Sadho's cross-examination the petitioner produced one letter, which is paper No. 236/A on the file. This document purports to be a letter written by Sadho Chowdhary to Roop Narain. The letter is undated. The letter makes a reference to the withdrawal by Shri Shiva Ram Singh after accepting Rs. 1,200 from Sri Raj Narain. Sadho Chowdhary denied having written this letter to Roop Narain. The letter purports to bear Sadho Chowdhary's signature. Sadho Chowdhary was asked to sign before this Tribunal. Paper No. 238/A is Sadho Chowdhary's signature made before the Tribunal. There is a good deal of resemblance between the signatures appearing in paper Nos. 236/A and 238/A. But it is difficult to say from a mere comparison of the two signatures that, the signature appearing on the disputed letter is Sadho Chowdhary's signature. It appears that Sadho Chowdhary is practically illiterate. He can just sign his name. So assuming that paper No. 236/A bears Sadho's signature, one cannot be sure that this letter was written with his knowledge or consent. Moreover, we fail to see how this letter found its way into the hands of the petitioner.

According to the petitioner, one Bhaggal Ram also played a part in making Shri Shiva Ram Singh withdraw from the contest. Bhaggal Ram appeared before the Tribunal as D. W. 9. He is Sarpanch and Sabhapati of the Goan Sabha of Hardattpur. He denied having put pressure upon Sadho Chowdhary in order to make Shri Shiva Ram Singh withdraw from the contest. Bhaggal Ram admitted that he addressed the meeting at Nagepur. He said that he opposed Shri Shiva Ram Singh's candidature, because he was an outsider and had done no work within the Constituency. The respondent and Bhaggal Ram both belong to the Praja Socialist Party. Bhaggal Ram admitted having worked for Shri Raj Narain in the election. Bhaggal Ram is an interested witness.

Shri Ram Adhar, respondent No. 7, was examined as D.W. 17. He said that Shri Shiva Ram Singh never withdrew from the contest, but was helping Shri Rishi Narain till the end. Shri Shiva Ram Singh's chances were poor, as he is a man of bad repute. Admittedly Shri Ram Adhar was a covering candidate for Shri Raj Narain. Shri Ram Adhar is a highly interested witness.

According to Shri Shiva Ram Singh's statement, Roop Narain and Shri Vishwanath Sharma were present at the place of payment of Rs. 1,200. The respondent produced Roop Narain and Shri Vishwanath Sharma, as D.Ws. 2 and 11. They both denied that any such payment took place in their presence. Roop Narain (D.W. 2) was a member of Banaras District Board. As regards the meeting at Nagepur, Roop Narain said that people in the meeting were saying that there were influential people in the Constituency, while Shri Shiva Ram Singh was an outsider. So it was difficult for him to get support. Roop Narain denied having received the letter (paper No. 236/A) from Sadho Chowdhary. Roop Narain admitted that Shri Shiva Ram Singh used to do social work. This constituency contains more Kurmis than people of any other single caste. Roop Narain admitted having helped a Socialist candidate Ram Narain against the Congress candidate. We may, therefore, assume that, Roop Narain's sympathy is for Shri Raj Narain.

Shri Vishwanath Sharma (D.W. 11) is Assistant Secretary of Kashi Vidyappith. At one time he was a member of All-India Congress Committee. Later he joined the Socialist Party. Shri Vishwanath Sharma belong to the same family. Obviously, this witness is deeply interested in Shri Raj Narain. But in view of his status, Shri Vishwanath Sharma's testimony carries weight. Shri Raj Narain examined himself as D.W. 12. He of course denied having made Shri Shiva Ram Singh withdraw from the contest, or having paid him Rs. 1,200 as alleged.

The respondent produced two witnesses in order to show that Shri Shiva Ram Singh is an unreliable bad person. Suleiman (D.W.5) stated that Shri Shiva Ram Singh is a man of no influence. He has been out-casted. He indulges in mal-practices. Suleiman is a retired police constable. These days he has been working as a cloth hawker. Shri Shiva Ram Singh lives at Chuppepur, while Suleiman lives at Gillet Bazar, Banaras, at a distance of 400 yards from Chuppepur. We do not attach much importance to Suleiman's statement. Bimal Deo Singh (D.W.13) also stated that Shri Shiva Ram Singh has been out-casted. He kept a Brahmin woman as a mistress, although his wife was alive. Bimal Deo said that Shri Shiva Ram Singh withdrew his candidature on account of domestic troubles. Bimal Deo is a resident of village Sikaul, which adjoins Chuppepur. According to Bimal Deo, Shri Shiva Ram Singh obtained one girl from an *Anathalaya* and sold her. She was of neuter sex. But Shri Shiva Ram Singh was not prosecuted. On the contrary Shri Shiva Ram Singh prosecuted the *Anathalaya*, for cheating.

The petitioner strongly relies upon the draft (Ex. 8). Shri Vishwanath Sharma (D.W. 11) admitted having written the draft (Ex. 8). But he explained that he did not write Ex. 8 in the circumstances mentioned by Shri Shiva Ram Singh. Shri Vishwanath Sharma's version is that he wrote Ex. 8 about the 15th or 16th of December, 1951. That day he had gone to court in connection with some cases. Shri Shiva Ram Singh went to Shri Vishwanath Sharma in the court compound, and started discussing the election. Shri Shiva Ram Singh said that he proposed to withdraw from the contest in view of his domestic troubles and other worries. He realized that an independent candidate had no chance. He asked Shri Vishwanath Sharma to prepare a statement on behalf of Shri Shiva Ram Singh. So Shri Vishwanath Sharma wrote out the draft (Ex. 8) at Shri Shiva Ram Singh's request. Shri Vishwanath Sharma said that the substance was given by Shri Shiva Ram Singh, but the language used in the Ex. 8 is Shri Vishwanath Sharma's. We have noticed that the draft (Ex. 8) contains a sentence favourable to the Socialist Party. It appears that Shri Vishwanath Sharma utilised this opportunity in order to make the draft favourable to the Socialist Party. It seems rather strange that Shri Shiva Ram Singh should have approached Shri Vishwanath Sharma to prepare a draft in connection with the withdrawal. During the cross-examination of Shri Shiva Ram Singh (P.W. 5) no suggestion was made that the draft (Ex. 8) was written in the court compound as stated by Shri Vishwanath Sharma. Another witness for the respondent on this point is Bhrigunath (D.W. 10). He deposed that he was present when Shri Shiva Ram Singh approached Shri Vishwanath Sharma and got the draft (Ex. 9) written by him. Bhrigunath works as a clerk of one pleader Shri Sankatha Prasad. Bhrigunath signed the nomination form (Ex. 92) for Shri Raj Narain. Bhrigunath appears to be interested in Shri Raj Narain.

According to the petitioner's evidence, Shri Raj Narain paid Rs. 1,200 to Shri Shiva Ram Singh at his residence at Chuppepur on the evening of 12th December 1951. Shri Raj Narain on the other hand stated that throughout the evening of 12th December 51 he was busy with a Kajli meeting (Poetic recital) in village Jakhnli. The respondent produced three other witnesses on this point. They are Ram Nath Misra (D.W.14), Narottam Singh Vaidya (D.W.15) and Hridaya Narain Misra (D.W. 16). These three witnesses stated that Sri Raj Narain remained in the

Kajli meeting at Jakhni throughout the evening of 12th December 1951 till 11-30 p.m. Ram Nath Misra said that he recites poems. He admitted that he is an active member of the Socialist Party. He mentioned 12th December 1951 as the date of the meeting at Jakhni. He, however, does not remember dates of visits to other meetings. Narottam Singh Vaidya admitted that he worked for Sri Raj Narain in the election. This witness is Sarpanch of an Adalati Panchayat. He does not maintain any diary. Yet he was able to mention 12th December 1951 as the date of the meeting at Jakhni. Hridaya Narain Misra (D.W. 16) is also an active member of the Socialist Party. There is no documentary evidence to prove that, Sri Raj Narain was in village Jakhni on the evening of 12th December 1951. It may be that he was in fact busy with the Kajli meeting at Jakhni that evening as stated by him. But the oral evidence produced by the respondent on the question of his alibi is not very convincing.

The respondent was not prepared to admit that, Sri Shiva Ram Singh withdrew from the contest at all. It is true that he did not withdraw his candidature within the prescribed time. But the draft (Ex. 8), news item in "Aaj" (Ex. 11) and other evidence go to show that, Shri Shiva Ram Singh lost interest in the election about the middle of December, 1951. It was, however necessary for the petitioner to prove that, it was Sri Raj Narain who made Sri Shiva Ram Singh withdraw from the contest. We think, the petitioner has not been able to establish this point. The private account book of Sri Shiva Ram Singh has not been produced. The recital in the return of election expenses (Ex. 7) is the only documentary evidence to prove the alleged payment. Sri Shiva Ram Singh is a man of ordinary education. He got only 548 votes as against 13,164 votes polled by Sri Raj Narain and 13,031 votes by Sri Rishi Narain. These figures suggest that, Sri Shiva Ram Singh was not a man of much influence in this Constituency. He does not live within the Constituency. Sri Raj Narain had the support of the Socialist Party, while Sri Rishi Narain was set up by the Congress Party. There was not much point in Sri Raj Narain's spending such a large sum merely to make one rival candidate withdraw from the contest. Shri Raj Narain and Sri Shiva Ram Singh were not the only candidates for the election. There were in the field other candidates including Sri Rishi Narain, who had the support of the Congress Party. Sri Shiva Ram Singh's withdrawal was not likely to be of special benefit to Sri Raj Narain. Besides this, it is impossible to believe that Sri Raj Narain took several friends with him, and made the alleged payment before witnesses. We, therefore, are unable to accept the petitioner's case that, Sri Raj Narain brought pressure upon Sri Shiva Ram Singh and paid him Rs. 1,200 to obtain his withdrawal.

Shri S. C. Khare appearing for Sri Ram Adhar argued that, even assuming that Sri Raj Narain paid Sri Shiva Ram Singh Rs. 1,200 to cover his election expenses as alleged, the act does not amount to bribery as defined in Sec. 123(i) R. P. Act, 1951. Sri Khare urged three points in support of his contention. Firstly, the payment was not gratification at all. Secondly, 30th November 1951 was the last date for withdrawal of candidatures. There could, therefore, be no question of any withdrawal of candidature on or after 12th December 1951. Thirdly, payment of bonafide election expenses is protected under the explanation to Section 123(1). Since we are not satisfied that any such payment took place at all, it is not necessary to decide the interesting question of law raised by Sri Khare.

The second incident described in Schedule I attached to the petition relates to the criminal case against Purshottam and others. The petitioner's case is that, originally Purshottam was working for the Congress candidate Sri Rishi Narain. Sri Raj Narain approached Purshottam, promised to help him in the criminal case by giving evidence for him, and asked him to help Sri Raj Narain in the election. In pursuance of this agreement. Sri Raj Narain gave evidence for Purshottam in the criminal case. So Purshottam and other accused of that case worked for Sri Raj Narain in the election.

The petitioner produced four witnesses on this point. Krishna Deo Upadhyaya (P.W. 1) stated that he visited village Thathra in connection with the election. Originally Purshottam used to work for the Congress. Later he started working for Sri Raj Narain. This witness is a resident of village Dih Ganjari, and has no connection with village Thathra. Beni Madho (P.W. 3) also deposed that at first Purshottam was working for Sri Rishi Narain. Later Purshottam started working for Shri Raj Narain. Sri Raj Narain told Purshottam that he should help Sri Raj Narain, and in return Sri Raj Narain would give evidence in the criminal case for Purshottam. Accordingly, Sri Raj Narain gave evidence for Purshottam. Beni Madho is a resident of village Chhateri Manapur, which is at a distance of one furlong from village Thathra. Beni Madho said that this

talk at Panchayat Bhawan took place one year before the polling day. According to other witnesses, the talk took place only a few weeks before the polling day. Ram Das (P.W. 6) stated that he heard the talk between Sri Raj Narain and Purshottam on this point. Ram Das said that the talk took place at the Panchayat Bhawan of village Thathra. Ram Das lives at village Chateri. He is the Head Master of the village School at Thathra. He is an employee of the District Board. The President of the District Board is a Congressman. The talk at Panchait Bhawan is said to have taken place in November, 1951. The school hours were from 9 a.m. to 12 a.m., and from 2 p.m. to 5 p.m. Ram Das said that he heard the talk at Panchait Bhawan at about 8 a.m. In the morning he used to go out to call children to the school. Balkaran (P.W. 10) is a resident of Thathra. He described the promise made by Sri Raj Narain in village Thathra. Balkaran said that he used to do election work after office hours. He used to canvas for Sri Rishi Narain. Balkaran has been in postal service for over 4 years. He ought to have known that, government servants were prohibited from canvassing in the election.

The respondent produced three witnesses on this point. D.W. 4 is Purshottam Bind of village Thathra. He is Sarpanch of Adalati Panchayat. He denied that Sri Raj Narain promised to help him in the criminal case if Purshottam helped Sri Raj Narain in the election. Purshottam said that he went to Mirzapur, and worked there against the Congress candidate Sri Wilson. It is admitted that Sri Raj Narain appeared as a defence witness in the criminal case against Purshottam and others. Purshottam admitted that several Binds helped Sri Raj Narain in the election. Purshottam was sentenced to imprisonment and fine under section 440, I.P.C. Ram Kishore (D.W. 7) is another resident of Thathra. He too is a Bind. He denied that Sri Raj Narain had asked Binds to vote for him on the understanding that he would give evidence for them in the criminal case. Ram Kishore admitted that he has been in Socialist Party for the last 4 years. Majority of the accused in the case against Purshottam and others were Binds. Ram Kishore was fined along with Purshottam. Ram Kishore was sentenced to imprisonment under Section 440, I.P.C. Purshottam and Ram Kishore are both interested in Sri Raj Narain. Sri Raj Narain (D.W. 12) denied that he had promised residents of village Thathra that, he would help them in their cases if they voted for him.

Ex. 12 is a copy of Sri Raj Narain's deposition as a defence witness in the criminal case against Purshottam and others. The deposition was given on 9th April 1952. That deposition was to the effect that, Sri Raj Narain happened to be present in a meeting of the Panchaiti Adalat of Thathra held on 19th November 1950. Sri Raj Narain noticed that Purshottam was lying ill on a cot. Ex. 3 is a copy of the judgment dated 25th April 1952 of that case. It was pointed out in that judgment that, the charge against Purshottam and others was with respect to an incident of 15th November 1950, whereas Sri Raj Narain's deposition was with respect to a meeting of 19th November 1950. It was observed that Sri Raj Narain's evidence was compatible with the position that, Purshottam took part in the unlawful assembly on 15th November 1950. In the result Purshottam and others accused were convicted. The judgment (Ex. 3) shows that the learned magistrate accepted Sri Raj Narain's evidence given in that case. It is true that Sri Raj Narain tried to help Purshottam Bind in the criminal case. But there is no reliable evidence to prove the petitioner's case that, Sri Raj Narain gave evidence for Purshottam as a result of an agreement that Sri Raj Narain should give evidence for Purshottam, and in return Purshottam and other Binds should help Sri Raj Narain in the election.

The third incident mentioned in Schedule I relates to village Barema. The petitioner's case is that in those days a case under section 107 Cr. P. C., against Jamuna and others was in progress. Sri Raj Narain induced the accused of that case to vote for him with the promise that, he would write to the District Magistrate of Banaras to save them from criminal proceedings. In pursuance of that promise, Sri Raj Narain wrote letters to the District Magistrate to that effect.

The petitioner produced five witnesses on this point. Vishwanath (P.W. 4) belongs to village Barema. He stated that Sri Raj Narain came to the witness for canvassing. Sri Raj Narain said that the accused should vote for him, and he would get them discharged in the criminal case. Sri Raj Narain wrote a letter to the District Magistrate recommending the discharge of all the accused. Vishwanath was not an accused in the case under section 107. He said that his cousin, Ram Kumar Singh, was an accused in that case. Vishwanath did not appear as a witness in the case under section 107. Vishwanath used to pay rent to Raghavendra Singh. Raghavendra Singh was helping Sri Rishi Narain in the election. Raghavendra Singh was often seen in the court-room during the hearing of this election petition. Vishwanath's Pattidar, Ram Nandan Singh, was :

Raghavendra Singh's servant. Laxmi Narain (P.W. 7) is a resident of village Tendui. He deposed that Sri Raj Narain told the accused in the case under section 107 that, they should vote for him, and he would arrange for their discharge. Till then villagers were supporting Sri Rishi Narain. After the promise given by Sri Raj Narain, villagers agreed to vote for him. Laxmi Narain had no concern with the criminal case. It is said that Sri Raj Narain gave the promise at village Rameshwar. Laxmi Narain had no special reason for going to village Rameshwar that day. Sahdeo Singh (P.W. 13) is another resident of village Tendui. He mentioned a talk between Sri Raj Narain and Jamuna. Sahdeo Singh said that this talk took place in the court compound at Banaras. He had no case in any court that day. He explained that that day he went to Banaras in order to receive money sent by his brother from Bombay by money order. Money had been received in the name of a Mukhtar of Banaras. Sahdeo Singh said that the Mukhtar did not obtain any receipt from the witness. Nor did the Mukhtar deliver any money order coupon. P.Ws. 11 and 16 are formal witnesses. They prove that the case under section 107, Cr. P. C., started upon the report (Ex. 88), dated 23rd January 1951 made by a police Sub-Inspector.

The respondent produced three witnesses on this point. Jokhan Singh (D.W. 3) belongs to village Barcma. He stated that it was wrong that Sri Raj Narain promised to secure discharge of the accused on condition that villagers would vote for him. Jokhan Singh's cousin Chet Narain worked as Sri Raj Narain's polling agent at Rameshwar polling station. Jokhan Singh was once bound down under section 107. According to Vishwanath (P.W. 4), Sri Raj Narain handed over a letter to Jokhan Singh for taking it to Sri Raj Narain's office. Jokhan Singh denied that any such letter was made over to him by Sri Raj Narain. Sri Raj Narain (D.W. 12) denied that he promised residents of Barema that, he would help them in their criminal cases if they voted for him. He explained that he wrote a letter to the Collector in his capacity as joint Secretary of the Socialist Party. Sri Ram Adhar (D.W. 17) denied that Sri Raj Narain gave any letter to Jokhan Singh after the meeting at Rameshwar.

The file of the criminal case against Jamuna Singh and others under section 107, Cr. P. C., has been summoned before this Tribunal. It is case No. 166 of 1951. We find on the record of the criminal case two documents Ex. 15 and Ex. 15-A, which purport to be letters addressed by Sri Raj Narain to the District Magistrate. Sri Raj Narain admitted that the letter (Ex. 15-A) is in his handwriting. The substance of letter Ex. 15 is the same as that of Ex. 15-A. At the foot of Ex. 15 there was an order by the District Magistrate asking the Additional District Magistrate to submit a report about the pending cases mentioned in Sri Raj Narain's application. Although Sri Raj Narain admits that he wrote the slip Ex. 15-A, he denied that he sent this very slip to the District Magistrate. Sri Raj Narain stated that he sent the slip Ex. 15-A to the office of the Socialist Party. A proper application was prepared in the office of the Socialist Party, and Ex. 15 is a carbon copy of that application. It was this carbon copy, which was actually sent to the District Magistrate. Sri R. N. Basu, appearing for the respondent suggested that the original slip (Ex. 15-A) was later placed on the record of the criminal case for purposes of this election petition. There is doubt that the carbon copy (Ex. 15) was sent to the District Magistrate. Ex. 15 is on a foolscap paper. Ex. 15-A was written on a slip of paper. There was no point in sending the slip (Ex. 15-A) in addition to the carbon copy (Ex. 15). There appears to be much force in the respondent's contention that, the slip (Ex. 15-A) was placed on the record of the criminal case for purposes of the election petition.

Ex. 15 and Ex. 15-A are in Hindi. The application may be translated into English thus:—

"You have been informed several times that at several places in the district, poor tenants are being harassed for years under section 107. For example, I wish to place before you the incident of village Barema in police circle Mirza Murad.—(1) State versus Tej Bahadur Singh and others, (2) State versus Jamuna Singh and others. These cases have been pending for a year. 40 or 50 men attend the court again and again, and are harassed without any evidence. I want that you should take suitable action in the matter, and save the poor men from unnecessary trouble."

The letter was signed by Sri Raj Narain as the Joint Secretary, Socialist Party, U.P.

The trial court submitted a report to the Additional District Magistrate that, delay in the cases was unavoidable. The trial court decided the case on 27th June 1952. All the accused persons were ordered to furnish security under section 107 Cr. P. C. All the eight persons, who were ordered by the learned magistrate

to furnish security, filed an appeal. The appeal was allowed by the learned Sessions Judge of Banaras on 23rd September 1952. The eight appellants were discharged.

We are not called upon to express an opinion as to whether writing the letter (Ex. 15) to the District Magistrate with respect to cases pending before a subordinate magistrate amounted to contempt of court. What we have to consider is whether the letter (Ex. 15) establishes the corrupt practices of bribery and undue influence. The letter contains a sentence that, 40 or 50 persons were being harassed without any evidence. Shri Sahdeo Singh contended that, the sentence implied that the accused were innocent and should be discharged. On the other hand Sri R. N. Basu for the respondent argued that, the sentence in question merely pointed out that, prosecution evidence against the accused was not being placed before the court. In this connection it may be pointed out that the case started upon the police report dated 23rd January 1951. Some of the accused appeared before the court on 12th June 1951. The letter (Ex. 15) does not bear any date. But the order of the District Magistrate at the foot of the letter is, dated 5th January 1952. We may, therefore, take it that, the letter (Ex. 15) was sent to the District Magistrate about 5th January 1952. There were 10 hearings in the case between June, 1951 and January, 1952. On certain hearings the presiding officer was busy with other work. On other hearings prosecution evidence was not ready. Prosecution evidence did not start till April 1952. There was thus reason for complaining about delay in the disposal of the case. The expression "Bina Kisi saboot ke" appearing in Ex. 15 probably referred to the delay in producing evidence against the accused before the court. It is true that the learned magistrate found it necessary to demand security from the accused. But the accused were discharged in appeal. We may, therefore, take it that, there was not sufficient justification for the proceedings under section 107 Cr. P. C.

Sri R. N. Basu drew our attention to the result of polling in Polling station Rameshwar. There were three booths in Polling Station Rameshwar. Exs. 44 and 48 are forms No. 14 for Sri Rishi Narain and Sri Raj Narain respectively. From these forms No. 14 we gather the following result:—

Booth No.	Sri Rishi Narain	Sri Raj Narain
1.	254	129
2.	217	81
3.	281	175

These figures show that for each of the three booths of polling station Rameshwar. Sri Rishi Narain got more votes than Sri Raj Narain. Village Barema lies within polling station Rameshwar. We may presume that from village Barema, Sri Rishi Narain got more votes than Sri Raj Narain. This circumstance goes against the petitioner's case that Sri Raj Narain won over electors of village Barema by practising bribery and corruption. The petitioner seems to have got this idea from the fact that Sri Raj Narain arranged to send the letter (Ex. 15) to the District Magistrate, while the cases under section 107 were pending. Sri Raj Narain admits his responsibility for sending the letter (Ex. 15) to the District Magistrate. But it has not been proved that, the letter was sent in pursuance of an agreement that, residents of Barema should vote for Sri Raj Narain and he would in return secure discharge of the accused.

It is well-established that the standard of proof required in the matter of a corrupt practice is the same as that in the case of a criminal charge. (Lyallpur Case Doabia's Indian Election Cases, Vol. I, page 121). Sri Sahdeo Singh, with some hesitation, attempted to dispute this well-settled proposition of law. He referred to Hissar Case reported in the *Gazette of India, Extraordinary* No. 209, dated 10th August 1953, Part II, Section 3, page 2659. The Election Tribunal quoted the following passage from Halsbury's Laws of England, Vol. XII—on Elections, page 286:—

"Due proof of a single act of bribery by a candidate or his agents, however insignificant that act may be, is sufficient to invalidate the election..... For this reason clear and unequivocal proof is required before a case of bribery will be held to have been established. Suspicion is not sufficient, and the confession of the person alleged to have been bribed is not conclusive. Bribery, however, may be implied from the circumstances of the case and the court is not bound by the strict practice applicable to criminal cases, but may (act) on the uncorroborated testimony of an accomplice....."

After quoting this passage, the Tribunal made it clear that, in appreciating the evidence and coming to a finding the Tribunal was applying the principle of proof

beyond reasonable doubt. In the present case the petitioner mentioned in Schedule I three cases of alleged bribery. In non of these three cases has the petitioner succeeded in proving beyond reasonable doubt that, respondent No. 1 was guilty of bribery.

We, therefore, decide issue No. 1 against the petitioner.

Issue No. 2.—This issue deals with the charge of undue influence, and has to be considered with reference to Schedules I and II. The three instances mentioned in Schedule I, have already been considered by us during the discussion under issue No. 1. As regards the first instance of Schedule I, we held that payment of Rs. 1,200 has not been proved. As regards the second instance of Schedule I, we found that although Sri Raj Narain gave evidence for Purshottam in the criminal case, it has not been proved that there was an agreement that Purshottam and others should vote for Sri Raj Narain and in return Sri Raj Narain would help Purshottam in the criminal case. As regards the third instance of Schedule I, we have held that the petitioner failed to prove that, the letter written by Sri Raj Narain to the District Magistrate was in pursuance of an agreement that residents of village Barema should vote for Sri Raj Narain and in return he would arrange for discharge of the accused. Thus the charge of undue influence has not been proved in any of the three cases. The petitioner did not lead evidence to prove the allegation of Schedule II. Sri Sahdeo Singh did not press Schedule II. Thus the petitioner fails under this issue also.

We decide issue No. 2 against the petitioner.

Issue No. 3.—The charge against respondent No. 1 is that his return of election expenses is false, inasmuch as he omitted the item of Rs. 1,200. We held under issue No. 1 that, payment of Rs. 1,200 by Sri Raj Narain to Sri Shiva Ram Singh has not been proved. There was, therefore, no question of entering this item in Sri Raj Narain's return of election expenses. It cannot be said that the return was false.

We decide issue No. 3 against the petitioner.

Issue No. 4.—The charge under this issue is that the election staff committed irregularities and illegalities as detailed in Schedule V. At the petitioner's instance two Commissioners Sri S. K. Sahai (P.W. 15) and Sri Chandra Behari (P.W. 14) worked in succession, and examined the ballot papers accounts. Exs. 85, 86, and 87 are notes prepared by Sri S. K. Sahai, Commissioner. Exs. 83 and 84 are notes prepared by Sri Chandra Behari Commissioner. Ex. 82 in his final report embodying the result of his inspection of ballot papers accounts. We may now proceed to examine how far irregularities and illegalities in the conduct of the election have been proved.

Schedule V consists of two paragraphs. In paragraph (1) of Schedule V it was alleged that ballot boxes were defective. This charge was not pressed on behalf of the petitioner.

Paragraph (2) of Schedule V runs thus: "The procedure laid down in Rules 23, 25, 32, 33 and 46 of the Representation of the Peoples (Conduct of Election and Election Petition) Act, 1951, were not followed inasmuch as This paragraph contains five clauses (a) to (e). These five clauses may now be considered one by one.

Clause (a) of paragraph (2) of Schedule V.—The complaint is that, the presiding officers of polling stations Rameshwar and Barki did not prepare and submit returns in form No. 10. On page 7 of the Commissioner's report (Ex. 82) it is noted that, there is no ballot paper account kept of polling stations Barki and Rameshwar. Thus the charge made in clause (a) has been proved.

Clause (b) of paragraph (2) of Schedule V.—The complaint is that in many of the returns of form No. 10, details for each booth were not given as required. On page 6 of the Commissioner's report (Ex. 82) it is noted that, form No. 10 of only one polling station No. 26 Bachhun has been filled up booth-wise strictly in accordance with the rules giving all the necessary particulars. Thus the charge under clause (b) is also proved.

Clause (c) of paragraph (2) of Schedule V.—The charge is that, in polling station No. 15, Jansa, unused ballot papers were not returned to the Returning Officer as required. We find a reference to polling station Jansa on page 8 of the Commissioner's report (Ex. 82). The Commissioner's report is to the effect that, the mark A/36 preceding the serial numbers was not mentioned in form No. 10 for Jansa and certain other polling stations. This defect is of a different nature from the defect alleged in clause (c). Ex. 33 is form No. 10 for polling station

Jansa. This form mentions the number of unused ballot papers returned. There is no reason to suppose this entry in Ex. 33 is wrong. The charge made in clause (c) has not been proved.

Clause (d) of paragraph (2) of Schedule V.—The charge runs thus: "In polling station No. 23 Mirzamurad the presiding officer states in form No. 10 that 200 ballot papers have been sent to Roopapur polling station. But there is no mention of this by the presiding officer at Roopapur." Exs. 38 and 40 are forms No. 10 for polling station Roopapur and Mirzamurad respectively. It is noted in Ex. 40, that, 200 ballot papers were sent to Roopapur. There is no corresponding entry in Ex. 38 that 200 ballot papers were received from Mirzamurad polling station. So the allegation made in clause (d) of paragraph (2) of Schedule V, is correct.

But this apparent discrepancy does not appear to be of any practical importance. For, in form No. 10 of polling station Mirzamurad (Ex. 40) it was noted that, the 200 ballot papers sent to Roopapur were A/36 469801 to A/36 470000. We find a copy of the check slip of polling station Roopapur on page 98 of Commissioner's notes (Ex. 87). This check slip shows that ballot papers A/36 469801 to A/36 470000 were used at polling station Roopapur. There was thus no loss of ballot papers. The 200 ballot papers sent from Mirzamurad reached Roopapur.

Clause (e) of paragraph (2) of Schedule V.—There is no evidence to prove the allegations of clause (e).

In addition to the allegations contained in Schedule V, Shri Sahdeo Singh drew our attention to certain other discrepancies. For example, the group of ballot papers assigned to booth No. 2 of polling station Bhatauli was 521001 to 522000. But 269 ballot papers from the group 520001 to 521000 were found in the ballot box of Sri Raj Narain for booth No. 2 of polling station Bhatauli. This group of ballot papers was really meant for booth No. 1 of polling station Bhatauli. In this way ballot papers meant for booth No. 1 were actually found in Sri Raj Narain's ballot box in booth No. 2. There were similar discrepancies in ballot boxes of other polling stations. Sri Sahdeo Singh contended that, all these ballot papers counted in favour of Sri Raj Narain ought to have been rejected by the Returning Officer. Upon the counting done by the Returning Officer, Sri Raj Narain had a majority of 133 votes. If the votes improperly accepted are now excluded, Sri Raj Narain would lose his majority.

Sri Sahdeo Singh relied upon Rule 47(1)(c) of R.P. Rules 1951. Rule 47(1)(c) runs thus: "A ballot paper contained in a ballot box shall be rejected if it bears any serial number of mark different from the serial numbers or marks of ballot papers authorised for use at the polling station or the polling booth at which the ballot box in which it was found was used." Sri Ram Nandan Prasad, who was the Returning Officer for this Constituency, was examined in this case as D.W. 6. He stated that he issued ballot papers polling station wise. It was for the presiding officer to distribute ballot papers allotted to him among the booths of his polling station. During the counting, the Returning Officer treated ballot papers as valid irrespective of their distribution among different polling booths of a particular polling station. Apart from the direction contained in Rule 47(1)(c), R.P. Rules, 1951, an exchange of ballot boxes between different booths appears immaterial so long as the ballot boxes bear the symbol of the same candidate. The object of polling is to ascertain whether a certain elector wishes to give his vote for this candidate or that candidate. If an elector wishes to give his vote for a candidate X, it is immaterial whether the elector puts his ballot paper in booth No. 1 or in booth No. 2. It has not been suggested that the 209 votes obtained by Sri Raj Narain in booth No. 2 of Bhatauli polling station were in fact meant for some other candidate.

In Gidwani's case (*Gazette of India Extraordinary*, No. 362, dated 25th August 1952, Part I, Section 1, page 2016) the Election Tribunal held that, Rule 47(1)(c) is merely directory. On the other hand, in Hoshangabad Case (*Gazette of India Extraordinary*, No. 83, dated 15th April 1953, Part II, Section 3, page 1087) the Election Tribunal held by a majority that, the provisions of Rule 47(1)(c) are mandatory. It seems unnecessary for us to discuss which of these two decisions lays down the correct law. We are unable to pursue the point further for the simple reason that this matter was never raised in the election petition. Issue No. 4 has arisen out of the allegations contained in paragraph (16) of the petition and Schedule V. In paragraph (16) of the petition there was a general complaint about illegalities. It was stated in paragraph (16) that, instances of such irregularities, illegalities and non-observance of Rules are given in Schedule V. We have already gone through all the allegations contained in Schedule V. There is no allegation in Schedule V to the effect that, ballot papers assigned to one booth were actually used or counted in another booth. It is stated in Schedule V

that, certain rules of R.P. Rules, 1951, have been violated. Schedule V makes no reference to Rule 47. Paper No. 17-A was petitioner's application for amendment of Schedule V. It was prayed in the application (17-A) that, breach of Rule 47(1)(c) might be added in Schedule V. We rejected the application for amendment (paper No. 17-A) on 28th November 1952. We are attaching to this judgment a copy of our order, dated 28th November 1952 as Appendix "A". The petitioner is not now entitled to urge before us that, Rule 47 has been violated.

Sri Sahdeo Singh contended that the matter under consideration is governed by the rules expressly quoted in Schedule V. The Rules specified in Schedule V include Rules 32, 33 and 46. Rule 32 deals with delivery of ballot boxes to the Returning Officer after the close of the poll. There is no complaint that ballot boxes were not delivered to the Returning Officer after the close of the poll. Rule 33 deals with the account of ballot papers to be prepared by the presiding officer after the close of the poll in form No. 10. Defects in preparing form No. 10 have already been noticed. Rule 46 lays down the procedure to be followed at the counting of votes. This rule contains elaborate instructions for counting of votes. We have carefully gone through the instructions contained in Rule 46. We do not find that there was violation of any instructions contained in Rule 46. What Sri Sahdeo Singh really wanted to urge was alleged breach of Rule 47(1)(c). Since exchange of ballot papers or booths or breach of Rule 47(1)(c) was not pleaded in the election petition, the petitioner is not entitled to agitate this point before the Tribunal.

We have merely to consider the effect of irregularities, which have been alleged and proved. We have found above that, there was irregularity in preparing forms No. 10 at most of the polling stations. But it has not been shown how this defect materially affected the result of the election. The result of an election is announced in form No. 16. This form is prepared from form No. 14, which is the form of account of ballot papers. There was no complaint in the election petition that, there was any irregularity in the actual counting or in preparing form No. 14. The ballot papers account in form No. 10 is to be prepared at polling stations as a check on the proper use of the ballot papers supplied to polling stations. Even if form No. 10 is not prepared at any particular polling station, such omission would not by itself render that polling invalid. We, therefore, hold that, forms No. 10 at a number of polling stations were defective as mentioned in clauses (a) and (b) of paragraph (2) of Schedule V. But these irregularities did not materially affect the result of the election.

Issue No. 5.—No charge of any corrupt practice has been proved against respondent No. 1. So the question of condoning any such practice does not arise.

Issue No. 6.—The question for consideration under this issue is whether the verification of the election petition is defective. Section 83, R.P. Act, 1951, deals with contents of a petition. Sub-section (1) of Section 83 lays down that, an election petition shall be verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings. Section 83(2) states: "The petition shall be accompanied by a list signed and verified in like manner setting forth particulars of any corrupt or illegal practices which the petitioner alleges....." Order VI, Rule 16, C.P.C., deals with verification of pleadings. Under sub-rule (2) of Rule 15, "the person verifying shall specify, by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge, and what he verifies upon information received and believed to be true." Sub-rule (3) of Rule 15 requires that, "The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed."

A perusal of the election petition and its Schedule shows that, the different verifications made by the petitioner are defective, in various ways. The verification at the foot of the petition runs thus: "I, Thakur Prasad, petitioner, verify that the contents of this petition are true to my knowledge and belief. Verified on this the 2nd day of May, 1952." There are similar verifications at the foot of Schedules I and II. Schedules III, IV and V do not bear any separate verification. Schedules III and IV were not pressed on behalf of the petitioner. We have only to consider the main election petition with Schedules I, II and V.

It will be noticed that the verifications at the foot of the petition and Schedules I and II do not specify which paragraphs are true to the petitioner's own knowledge and which paragraphs are believed by him upon information received. There is a general verification that the contents are true to the petitioner's knowledge and belief. Further, the place where the verification was signed is not mentioned in the different verifications.

In 'Ranjit Ram v. Katesar Nath' (18 I.L.R. Allahabad 396) the verification on the plaint was in these terms: "The contents of the petition of plaint are true to

the best of my knowledge and belief." It was held by a Full Bench of Allahabad High Court that, this form of verification, though not free from ambiguity, was in substantial compliance with the provisions of the Code of Civil Procedure. It was further observed that, it was difficult to imagine any case in which a defective verification of a plaint could affect the merits of the case or jurisdiction of the court. On the authority of Ranjit Ram's case we are prepared to condone the defect in the verification in the present case.

It has further been pointed out that, Schedule V does not bear any verification at all. In our order, dated 28th November 1952 passed on the application (paper No. 17-A) we had occasion to refer to the absence of verification at the foot of Schedule V. We held in that order, dated 28th November 1952 that, Schedule V must be treated as an integral part of the main election petition. Since Schedule V is to be treated as an integral part of the main election petition, the absence of a separate verification at the foot of Schedule V is immaterial. We, therefore, hold that the verification of the election petition is defective as indicated above. But the petition should not be dismissed on the ground of this defective verification.

Issue No. 7.—The petitioner has not been able to prove any corrupt practice against respondent No. 1. Nor was there any irregularity or illegality, which materially affected the result of the election. So, the election of the returned candidate will stand, and the petition must be dismissed.

Sri S. C. Khare urged that under section 99 R.P. Act, 1951, we should name Sri Shiva Ram Singh candidate for having committed a number of corrupt practices. It was urged that Sri Shiva Ram Singh has been guilty of the following corrupt practices:

- (a) minor corrupt practice under section 124(3) for receiving illegal gratification,
- (b) minor corrupt practice under section 124(5) for canvassing on communal lines; and
- (c) minor corrupt practice under section 124(4) for making a false return of election expenses.

We are not satisfied that Sri Raj Narain paid Rs. 1,200 to Sri Shiva Ram Singh as alleged in the petition. We ought not to name Sri Shiva Ram Singh for the minor corrupt practice under section 124(3) merely because he admits such a payment. We can name a person under section 99 of the Act only where a charge is made in the petition. The petition did not contain any charge that Sri Shiva Ram Singh canvassed on communal lines, or submitted a false return of election expenses. So we are unable to pass any order against Sri Shiva Ram Singh under section 99 of the Act.

Since the petition has failed the petitioner should be ordered to bear Sri Raj Narain's costs, which we assess at Rs. 600. The petitioner did not claim any relief against Sri Ram Adhar, respondent No. 7 as such. Respondent No. 7 should bear his own costs.

ORDER

The election petition is dismissed. Under section 99, R.P. Act, 1951, we record that, no corrupt or illegal practice has been proved against Sri Raj Narain respondent No. 1. The petitioner shall pay Sri Raj Narain respondent No. 1 Rs. 600 as costs. Sri Ram Adhar respondent No. 7 shall bear his own costs. The petitioner is entitled to obtain a refund of the balance (Rs. 400) from his security deposit (Rs. 1,000).

The 4th March, 1954.

(Sd.) V. G. OAK, I.C.S., *Chairman.*

(Sd.) N. N. MUKERJI, *Member.*

(Sd.) BABU RAM AVASTHI, *Member.*

APPENDIX "A"

ELECTION PETITION NO. 244 OF 1952

ORDER

This is an application for amendment by the petitioner. When the petition came up for hearing before the Tribunal on 14th October 1952, the petitioner moved the application for amendment (17/A). Respondent No. 1 has filed his objection (20/C) to the application for amendment (17/A).

The proposed amendment is contained in paragraph (9) of the application. The proposed amendment has been divided into two sections 'A' and 'B'. Under section 'A' it is proposed to amend Schedule V attached to the election petition. Schedule V mentions violation of Rule 46. It has been proposed that Rules 47 and 49 be added after Rule 46. It is stated that irregularities occurred at a number of polling stations. A long list of such polling stations has been mentioned at the foot of section 'A'. The election petitioner is accompanied by five Schedules. There is no schedule or list expressly described as a 'list of particulars of corrupt and illegal practices'. It is, therefore, difficult to say whether the petitioner intended to treat the five schedules as a part of the election petition or as a list of particulars. Schedules I and II have been verified. But Schedules III, IV and V do not bear any verification. The heading of Schedule V is, "Irregularities and illegalities by the election staff." Schedule V does not purport to be a list of corrupt or illegal practices. In view of the nature of Schedule V and the want of verification, Schedule V must be treated as a part of the main election petition.

A similar question of amendment came up before us in the Banaras (City) case (Election Petition No. 243 of 1952). In that case, we laid down the following propositions:—

- (a) An election petition as such cannot be amended.
- (b) The list attached to an election petition may be amended only as permitted under sub-section (3) of Section 83 of the Act. Amendment of the list must not lead to amendment of the election petition itself.
- (c) Fresh instances of illegal or corrupt practices cannot be entertained by the Election Tribunal.

We propose to adopt the same view in the present case also. We have shown that Schedule V is to be treated as an integral part of the main election petition. So the proposed amendment under section 'A' will amount to an amendment of the election petition itself. This cannot be permitted.

Under Section 'B', it is proposed to add a new Schedule VI. This Schedule VI has reference to paragraph (15) of the petition. In paragraph (15) of the petition, it is complained that respondent No. 1 submitted a false return of election expenses inasmuch as he did not show the payment of Rs. 1,200 made to respondent No. 6. It was further stated in paragraph (15) of the petition that other items will be mentioned later, after inspection of the vouchers. In the proposed Schedule VI, it is mentioned that charges for the loudspeaker were not mentioned in the return of expenses. Sending a false return of expenses amounts to a minor corrupt practice under sub-section (4) of Section 124, R.P. Act, 1951. It was necessary to give the list of particulars for this practice. No separate list of particulars with reference to paragraph (15) of the petition is to be found among the various Schedules already attached. Under the proposed Schedule VI the petitioner proposes to cite one fresh item of expenses not already shown. This would amount to adding a new instance of a minor corrupt practice. On the principle laid down above, such a course cannot be permitted.

In the result the application for amendment (17/A) is dismissed.

The 28th November 1952.

(Sd.) V. G. OAK, I.C.S., *Chairman.*

(Sd.) BABU RAM AVASTHI, *Member.*

(Sd.) N. N. MUKERJI, *Member.*

[No. 19/244/52-Elec. III/6052.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*

